

§ 1.468A-8

26 CFR Ch. I (4-1-12 Edition)

group of corporations that join in the filing of a consolidated return, the name, address and taxpayer identification number of each electing taxpayer).

(3) The taxable year for which the election is made.

(4) For each nuclear decommissioning fund for which an election is made—

(i) The name and location of the nuclear power plant to which the fund relates;

(ii) The name and employer identification number of the nuclear decommissioning fund;

(iii) The total amount of actual cash payments made to the nuclear decommissioning fund during the taxable year that were not treated as deemed cash payments under § 1.468A-2(c)(1) for a prior taxable year;

(iv) The total amount of cash payments deemed made to the nuclear decommissioning fund under § 1.468A-2(c)(1) for the taxable year;

(v) The total amount of any special transfers (whether in cash or property) made to the nuclear decommissioning fund under § 1.468A-8 during the taxable year that were not treated as deemed transfers under § 1.468A-8(a)(4) for a prior taxable year;

(vi) The total amount of any special transfers (whether in cash or property) deemed made to the nuclear decommissioning fund under § 1.468A-8(a)(4) for the taxable year; and

(vii) For each item of property included in the amounts described in paragraph (b)(4)(v) or (vi) of this section, the amount of the item of property and whether the basis of the item of property is determined under § 1.468A-8(b)(5)(iii)(A) or § 1.468A-8(b)(5)(iii)(B).

[T.D. 9512, 75 FR 80701, Dec. 23, 2010]

§ 1.468A-8 Special transfers to qualified funds pursuant to section 468A(f).

(a) *General rule*—(1) *In general*. Under section 468A(f), a taxpayer maintaining a qualified nuclear decommissioning fund with respect to a nuclear power plant may transfer cash or property into the fund (a special transfer). The special transfer is not subject to the ruling amount limitation in section 468A(b) and is not treated as a cash

payment for purposes of that limitation. Thus, a taxpayer may, in the same taxable year, pay the ruling amount and make a special transfer into the fund. A special transfer may be made in cash, property, or both cash and property. The amount of a special transfer (that is, the amount of cash and the fair market value of property transferred) may not exceed the present value of the pre-2005 nonqualifying amount of nuclear decommissioning costs with respect to the nuclear power plant. The taxpayer is entitled to a deduction against income for a special transfer, as described in paragraph (b) of this section. A special transfer may not be made to a nuclear decommissioning fund before the first taxable year in which a deduction amount is applicable to the nuclear decommissioning fund (see paragraph (c) of this section).

(2) *Pre-2005 nonqualifying amount*—(i) *In general*. The present value of the pre-2005 nonqualifying amount of nuclear decommissioning costs with respect to a nuclear power plant is the amount equal to the pre-2005 nonqualifying percentage of the present value of the estimated future decommissioning costs (as defined in § 1.468A-1(b)(6)) with respect to the nuclear power plant as of the first day of the taxable year of the taxpayer in which the special transfer is made or deemed made (or a later date that is on or before the date on which the special transfer is expected to be made if the taxpayer establishes to the satisfaction of the IRS that the determination of present value as of such date is reasonable and consistent with the principles and provisions of this section). For this purpose, the pre-2005 nonqualifying percentage for the plant is 100 percent reduced by the sum of—

(A) The qualifying percentage (within the meaning of § 1.468A-3(d)(4) as in effect on December 31, 2005) used in determining the taxpayer's last schedule of ruling amounts for the nuclear decommissioning fund under the law in effect before the enactment of the Energy Policy Act of 2005 (that is, the percentage of the plant's total nuclear decommissioning costs that were permitted to be funded through the fund

under the law in effect before the enactment of the Energy Policy Act of 2005); and

(B) The percentage of decommissioning costs transferred in any previous special transfer (that is, the amount transferred as a percentage of the present value of the estimated future costs of decommissioning as of the first day of the taxable year in which such previous transfer was made).

(ii) *Pre-2005 nonqualifying amount of transferee.* If there is a transfer of a nuclear decommissioning fund or part or all of its assets and § 1.468A-6 applies to the transfer, the pre-2005 nonqualifying amount determined with respect to the transferee is equal to the pre-2005 nonqualifying amount (or a proportionate part of the pre-2005 nonqualifying amount) that would have been determined with respect to the transferor but for such transfer.

(3) *Transfers in multiple years.* A taxpayer making a special transfer is not required to transfer the entire eligible amount in a single year. The requirements of paragraph (c) of this section apply separately to each year in which a special transfer is made. In calculating the amount of any subsequent transfer, the taxpayer must reduce the pre-2005 nonqualifying percentage under paragraph (a)(2) of this section to take into account all previous transfers. For example, if a taxpayer has a pre-2005 nonqualifying percentage of 40 percent, and transfers half of the eligible amount in a special transfer, any subsequent transfer must be calculated on the basis of a pre-2005 nonqualifying percentage of 20 percent.

(4) *Deemed payment rules—(i) In general.* The amount of any special transfer (whether in cash or property) described in § 1.468A-8 and made by an electing taxpayer to a nuclear decommissioning fund on or before the 15th day of the third calendar month after the close of any taxable year (the deemed payment deadline date) shall be deemed made during such taxable year if the electing taxpayer irrevocably designates the amount as relating to such taxable year on its timely filed Federal income tax return for such taxable year or, in the case of special transfers described in paragraph (a)(4)(ii) of this section, on an amended

return for such taxable year (see § 1.468A-7(b)(4)(v) and (vi) for rules relating to such designation).

(ii) *Special rule for certain special transfers.* Special transfers that the electing taxpayer designates as relating to a taxable year beginning after December 31, 2005, and ending before January 1, 2010, which are actually made within 90 days after the electing taxpayer receives a ruling from the Secretary relating to the special transfer are deemed made during the taxable year designated as the year to which the special transfer relates.

(b) *Deduction for amounts transferred—(1) In general.* (i) Except as provided in this paragraph (b), the deduction for any special transfer is allowed ratably over the remaining useful life of the nuclear power plant. The amount of the deduction for any taxable year is the deduction amount for such year specified in the schedule of deduction amounts required under paragraph (c) of this section.

(ii) For purposes of this paragraph (b), the remaining useful life of the nuclear power plant is the period beginning on the first day of the taxable year during which the transfer is made and ending on the last day of the taxable year that includes the last day of the estimated useful life of the nuclear power plant. The last day of the estimated useful life of the nuclear power plant is determined for this purpose under the rules of § 1.468A-3(c)(2).

(2) *Amount of deduction—(i) General rule.* Except as provided in this paragraph (b)(2), the deduction for property contributed in a special transfer is limited to the lesser of the fair market value of the property contributed or the taxpayer's basis in that property.

(ii) *Election—(A) In general.* If the fair market value of the property contributed is less than the taxpayer's adjusted basis in such property as of the date the property is contributed and the fund elects to treat the fair market value of the property as its adjusted basis in the property, the taxpayer may deduct an amount equal to the adjusted basis of the contributed property.

(B) *Manner of making election.* The election described in paragraph (b)(2)(ii)(A) of this section is made for

property contributed in a special transfer by attaching a description of the property and a statement that the fund is making an election under § 1.468A-8(b)(2)(ii) with respect to the property to the return of the fund for the taxable year in which the property is contributed to the fund.

(C) *Election allowed for property transferred prior to December 23, 2010.* The election described in paragraph (b)(2)(ii)(A) of this section may be made and a deduction equal to adjusted basis will be allowed for property contributed in a special transfer prior to December 23, 2010. The election in such a case may be made on an amended return of the fund for the taxable year in which the property is contributed to the fund and the transferor may amend previously filed returns to claim a deduction calculated by reference to the adjusted basis of the property.

(3) *Denial of deduction for previously deducted amounts.* If a deduction (other than a deduction under section 468A) has been allowed to the taxpayer (or a predecessor) on account of expected decommissioning costs for a nuclear power plant (a nonconforming deduction) or an amount otherwise includible in income has been excluded from the gross income of the taxpayer (or a predecessor) on account of such expected decommissioning costs (a nonconforming exclusion), the deduction allowed for a special transfer to the nuclear decommissioning fund maintained with respect to the plant is reduced. In the case of a single special transfer of the full eligible amount, the reduction is equal to the aggregate amount of all nonconforming deductions and nonconforming exclusions. In the case of a transfer of less than the full eligible amount, the reduction is a ratable portion of such aggregate amount.

(4) *Transfers of qualified nuclear decommissioning funds.* (i) If a special transfer is made to any qualified nuclear decommissioning fund, there is a subsequent transfer of the fund or the assets of the fund (a fund transfer), and § 1.468-6 applies to the fund transfer, any amount of the deduction under paragraph (b) of this section allocable to taxable years ending after the date of the fund transfer will be allowed as

a current deduction to the transferor for the taxable year that includes the date of the fund transfer. See § 468A-6(c) for additional rules concerning transfers of decommissioning funds, including the transfer of a portion of the taxpayer's interest in a nuclear power plant. If a taxpayer transfers only part of the fund or the fund's assets, the rules in this paragraph (b)(4) apply only to the corresponding portion of the deduction under paragraph (b) of this section.

(ii) If a deduction is allowed to the transferor under paragraph (b)(4)(i) of this section and the transferee is related to the transferor, the Internal Revenue Service (IRS) will not approve the transferee's schedule of ruling amounts for taxable years beginning after the date of the transfer unless the ruling amounts are deferred in a manner that results in recapture of the acceleration amount. For this purpose—

(A) The acceleration amount is the difference between the deduction allowed under this paragraph (b)(4) and the present value as of the beginning of the acceleration period of the deductions that, but for the transfer, would have been allowed under this paragraph (b) for taxable years during the acceleration period;

(B) The acceleration amount is recaptured if the aggregate present value of the ruling amounts at the beginning of the acceleration period is equal to the amount by which the aggregate present value of the ruling amounts that would have been approved but for this paragraph (b)(4)(ii) exceeds the acceleration amount;

(C) The acceleration period is the period from the first day of the transferor's first taxable year beginning after the date of the transfer until the end of the plant's remaining useful life;

(D) Present values will be determined using the assumptions that are used in determining the transferee's first schedule of ruling amounts; and

(E) A transferor and a transferee are related if their relationship is specified in section 267(b) or section 707(b)(1) or they are treated as a single taxpayer under section 41(f)(1)(A) or (B).

(5) *Special rules—(i) Gain or loss not recognized on transfers to fund.* No gain

or loss will be recognized on any special transfer.

(ii) *Taxpayer basis in fund.* Notwithstanding any other provision of the Internal Revenue Code (Code) and regulations, the taxpayer's basis in the fund is not increased by reason of the special transfer.

(iii) *Fund basis in transferred property—(A) In general.* Except as provided in paragraph (b)(5)(iii)(B) of this section, the fund's basis in any property transferred in a special transfer is the same as the transferor's basis in the property immediately before the transfer.

(B) *Basis in case of election.* If a fund makes the election described in paragraph (b)(2)(ii) of this section, the fund's basis in the property transferred is the fair market value of the property on the date of transfer.

(c) *Schedule of deductions required—(1) In general.* A taxpayer may not make a special transfer to a qualified nuclear decommissioning fund unless the taxpayer requests from the IRS a schedule of deduction amounts in connection with such transfer. A schedule of deduction amounts for a nuclear decommissioning fund (schedule of deduction amounts) is a ruling (within the meaning of §601.201(a)(2) of this chapter) specifying the annual deductions (deduction amounts) that, over the taxable years in the remaining useful life of the nuclear power plant, will result in the deduction of the entire amount of the special transfer. Such a request may be combined with a request for a schedule of ruling amounts under §1.468A-3(a). In the case of a combined request, the schedule of deduction amounts requested under this paragraph (c)(1) must be stated separately from the schedule of ruling amounts requested under §1.468A-3(a) and approval of the schedule of deduction amounts under this section will constitute a separate ruling. A request for a schedule of deduction amounts must comply with all provisions of paragraph (d) of this section.

(2) *Transfers in multiple taxable years.* A taxpayer making a special transfer in more than one taxable year pursuant to paragraph (a)(3) of this section must request a separate schedule of deduction amounts in connection with

each special transfer. More than one schedule of deduction amounts can be requested in a single ruling request to the Secretary and the Secretary will provide, in a single ruling, separate schedules of deduction amounts for each of a series of special transfers provided that each request for a separate schedule of deduction amounts complies with all requirements of this paragraph.

(3) *Transfer of partial interest in fund.* If a taxpayer transfers part of a fund or a fund's assets and is allowed a deduction under paragraph (b)(3) of this section, the taxpayer must request a new schedule of deduction amounts in connection with the transfer.

(4) *Special transfer permitted before receipt of schedule.* If an electing taxpayer has filed a timely request for a schedule of deduction amounts in connection with a special transfer for a taxable year and does not receive the schedule of deduction amounts before the deemed payment deadline for such taxable year, the taxpayer may make a special transfer to the nuclear decommissioning fund on the basis of the special transfer amount proposed in the taxpayer's request. If the schedule of deduction amounts provided by the Secretary is based on a special transfer amount that differs from the special transfer amount proposed in the taxpayer's request, rules similar to the rules of §1.468A-3(g)(2) and (3) shall apply.

(d) *Manner of requesting schedule of deduction amounts—(1) In general.* (i) In order to receive a deduction amount for any taxable year, a taxpayer must file a request for a schedule of deduction amounts that complies with the requirements of this paragraph (d), the applicable procedural rules set forth in §601.201(e) of this chapter (Statement of Procedural Rules) and the requirements of any applicable revenue procedure that is in effect on the date the request is filed.

(ii) A separate request for a schedule of deduction amounts is required for each nuclear decommissioning fund established by a taxpayer (see §1.468A-5(a) for rules relating to the number of nuclear decommissioning funds that a taxpayer can establish).

(iii) Except as provided by § 1.468A-5(a)(1)(iv) (relating to certain unincorporated organizations that may be taxable as corporations) and § 1.468A-3 (relating to a request for a schedule of ruling amounts), a request for a schedule of deduction amounts must not contain a request for a ruling on any other issue, whether the issue involves section 468A or another section of the Code.

(iv) In the case of an affiliated group of corporations that join in the filing of a consolidated return, the common parent of the group may request a schedule of deduction amounts for each member of the group that possesses a qualifying interest in the same nuclear power plant by filing a single submission with the IRS.

(v) Except as provided in paragraph (d)(1)(vi) of this section, the IRS will not provide or revise a deduction amount applicable to a taxable year in response to a request for a schedule of deduction amounts that is filed after the deemed payment deadline date (as defined in paragraph (a)(4) of this section) for such taxable year.

(vi) For special transfers relating to taxable years beginning after December 31, 2005, and before January 1, 2010, the IRS will not provide a deduction amount in response to a request for a schedule of deduction amounts that is filed after February 22, 2011.

(vii) Except as provided in paragraph (d)(1)(viii) of this section, a request for a schedule of deduction amounts shall be considered filed only if such request complies substantially with the requirements of this paragraph (d). In determining the date when a request is filed, the principles of sections 7502 and 7503 shall apply.

(viii) If a request does not comply substantially with the requirements of this paragraph (d), the IRS will notify the taxpayer of that fact. If the information or materials necessary to comply substantially with the requirements of this paragraph (d) are provided to the IRS within 30 days after this notification, the request will be considered filed on the date of the original submission. In addition, the request will be considered filed on the date of the original submission in a case in which the information and ma-

terials are provided more than 30 days after the notification if the IRS determines that the electing taxpayer made a good faith effort to provide the applicable information or materials within 30 days after notification and also determines that treating the request as filed on the date of the original submission is consistent with the purposes of section 468A. In any other case in which the information or materials necessary to comply substantially with the requirements of this paragraph (d) are not provided within 30 days after the notification, the request will be considered filed on the date that all information or materials necessary to comply with the requirements of this paragraph (d) are provided.

(2) *Information required.* A request for a schedule of deduction amounts must contain the following information:

(i) The taxpayer's name, address and taxpayer identification number.

(ii) Whether the request is for an initial schedule of deduction amounts or a schedule of deduction amounts for a subsequent special transfer.

(iii) The name and location of the nuclear power plant with respect to which a schedule of deduction amounts is requested.

(iv) A description of the taxpayer's qualifying interest in the nuclear power plant and the percentage of such nuclear power plant that the qualifying interest of the taxpayer represents.

(v) The present value of the estimated future decommissioning costs (as defined in § 1.468A-1(b)(6)) with respect to the taxpayer's qualifying interest in the nuclear power plant as of the first day of the taxable year of the taxpayer in which a transfer is made under this section.

(vi) A description of the assumptions, estimates and other factors that were used by the taxpayer to determine the amount of decommissioning costs, including each of the following if applicable:

(A) A description of the proposed method of decommissioning the nuclear power plant (for example, prompt removal/dismantlement, safe storage entombment with delayed dismantlement, or safe storage mothballing with delayed dismantlement).

(B) The estimated year in which substantial decommissioning costs will first be incurred.

(C) The estimated year in which the decommissioning of the nuclear power plant will be substantially complete (see § 1.468A-5(d)(3) for a definition of substantial completion of decommissioning).

(D) The total estimated cost of decommissioning expressed in current dollars (that is, based on price levels in effect at the time of the current determination).

(E) The total estimated cost of decommissioning expressed in future dollars (that is, based on anticipated price levels when expenses are expected to be paid).

(F) For each taxable year in the period that begins with the year specified in paragraph (d)(2)(vi)(B) of this section (the estimated year in which substantial decommissioning costs will first be incurred) and ends with the year specified in paragraph (d)(2)(vi)(C) of this section (the estimated year in which the decommissioning of the nuclear power plant will be substantially complete), the estimated cost of decommissioning expressed in future dollars.

(G) A description of the methodology used in converting the estimated cost of decommissioning expressed in current dollars to the estimated cost of decommissioning expressed in future dollars.

(H) The assumed after-tax rate of return to be earned by the amounts collected for decommissioning.

(I) A copy of each engineering or cost study that was relied on or used by the taxpayer in determining the amount of decommissioning costs.

(vii) The taxpayer's pre-2005 non-qualifying percentage (as defined in paragraph (a)(2) of this section).

(viii) The estimated useful life of the nuclear power plant (as such term is defined in paragraph (b)(1)(ii) or (iii) of this section).

(ix) If the request is for a subsequent schedule of deduction amounts, the amount of the previous special transfer and the present value of the estimated future decommissioning costs (as defined in § 1.468A-1(b)(6)) with respect to the taxpayer's qualifying interest in

the nuclear power plant as of the first day of the taxable year of the taxpayer in which the previous special transfer was made.

(x) If the request is for a subsequent schedule of deduction amounts, a copy of all schedules of deduction amounts that relate to the nuclear power plant to which the request relates and that were previously issued to the taxpayer making the request.

(xi) If the request for a schedule of deduction amounts contains a request, pursuant to § 1.468A-5(a)(1)(iv), that the IRS rule whether an unincorporated organization through which the assets of the fund are invested is an association taxable as a corporation for Federal tax purposes, a copy of the legal documents establishing or otherwise governing the organization.

(xii) Any other information required by the IRS that may be necessary or useful in determining the schedule of deduction amounts.

(3) *Statement required.* A taxpayer requesting a schedule of deduction amounts under this paragraph (d) must submit a statement that any nonconforming deductions and nonconforming exclusions have reduced the deduction allowed for the special transfer in accordance with paragraph (b)(2) of this section.

(4) *Administrative procedures.* The IRS may prescribe administrative procedures that supplement the provisions of paragraphs (d)(1) and (2) of this section. In addition, the IRS may, in its discretion, waive the requirements of paragraphs (d)(1) and (2) of this section under appropriate circumstances.

[T.D. 9512, 75 FR 80701, Dec. 23, 2010]

§ 1.468A-9 Effective/applicability date.

Sections 1.468A-1 through 1.468A-8 are effective on December 23, 2010 and apply with respect to taxable years ending after such date. Special rules that are provided for taxable years ending on or before such date, such as the special rule for certain special transfers contained in § 1.468A-8(a)(4)(ii), apply with respect to such taxable years. In addition, a taxpayer may apply the provisions of §§ 1.468A-1 through 1.468A-8 with respect to a taxable year ending on or before December